



McLaughlin, 10/015, 708, 11/02/01 [Division of 09/235,618 of 001/21/99

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This document is respectfully submitted.

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### CERTIFICATE OF MAILING

John R. Ewbank hereby certifies that this document is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Commissioner of Patents, Washington DC 20231 on the date indicated below.

Date *Nov 26, 2002*

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In the United States Patent and Trademark Office

William E. McLaughlin

10/015.708 filed Nov. 1, 2001

Division of 09/235,618 of 01/21/99

Group 3713, A. Rade, Assistant Examiner

Southampton, PA 18966-4545

November 25, 2002

Assistant Commissioner for Patents, Box Amendment without fee

Washington, DC 20231

Sir:

***ALERT CONCERNING AMAZING CONFUSION***

Sixty five years ago, custom suggested that a patent lawyer refer to him/herself as "counsel". However, in 2002, the Patent Office should not be offended by the use of "I". Since making the discovery about the amazing confusion on Friday afternoon, Nov. 22, I have spent more than 16 hours in trying to prepare this document, which includes some Exhibits scheduled for use in the application for a Certificate of Correction for the parent patent 6,482,108. Possibly the Examiner might have already prepared a Notice of Allowance or other Office Action before reading this. I deem it irrelevant whether the Examiner studies this before or after action on the merits in this case.

It is my understanding that a clerk for a Supreme Court Justice once discovered that dozens of lawyers, the trial court, and the intermediate appellate courts had all grossly misinterpreted a particular document because of their expectancy of it having normal characteristics and the absence of discerning proof-reading. The term "proof-reading" embraces not only typographical errors but also the departures from the content expected by the reader. The Patent Office has procedures for Certificates of Correction because some proofreading

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**errors are sure to occur and not be detected until after issuance of a patent. Parent patent 6,482,108 was supposed to issue with method claims, but instead issued with apparatus claims as a result of some inadvertent error in the total process. The assignee LIRSI has the responsibility for seeking the Certificate of Correction, and has already started work on such procedures. Some of the Exhibits for the CoC are pertinent herein and are attached hereto.**

**The Examiner is urged to handle this application on its merits while being aware that LIRSI, assignee of 6,482,108 plans to seek a Certificate of Correction concerning claims 1-3. Said patent was supposed to contain the method claims, but through some amazing confusion was printed with earlier revisions of the apparatus claims.**

**The enclosed Exhibit A is a print-out of data from PAIR concerning the 82 documents in the Index to the File History of 6,482,108. I have not completed the audit concerning consistency between such Index and my filed. Some discrepancies are relevant. Please note that applicant filed replacement drawings using Phone Confirmation and Transmittal Documents that were not noted in such Index Exhibit A. Photocopies of such Documents concerning replacement drawings are submitted herewith as Exhibits E and F.**

**Please note that the amazing confusion is clearly attributable to inadvertent goofs by the Patent Office that might never be traceable and may not merit significant investigation. It happened. A Certificate of Correction should cope with the problem. It is costing LIRSI a tremendous expense and no benefit. I have a 15% interest in the profits from LIRSI if there ever are any profits, but I have the obligation to gamble all patent expense [including the costs for the Certificate of Correction] and all of my time without any hope for reimbursement unless**

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LIRSI is successful in obtaining funds from licensees. If I had had the precognition to have foreseen what has happened thus far, then I probably would have been enough of a pessimistic pragmatist to have meekly accepted the propensity of the inventor to abandon the project in the Spring of 2001 instead of participating in the joint venture. I continue to have greater confidence in the invention than I have in the economy. Now my commitments are large enough that I am prepared to devote extra time and money to salvage my previous investments in LIRSI. Hence the current situation is more of a nuisance than I would desire, but one of those unfortunate bits of bad luck that needs to be accepted with the "cookie crumbling" fatalism, while hoping for a change in luck.

I do not recall ever prosecuting a Certificate of Correction in my 65 years of patent practice, but I can try to learn. The amazing confusion seems to be attributable to some "proof-reading error" type of goof that was discovered by the diligent Supreme Court clerk. I felt extremely humiliated on Friday afternoon to discover that I had read and seen copies of the issued patent from Tuesday though Friday before making the discovery of the amazing confusion. . Dick Jenkins, who had about 20 years in the Patent Licensing section of RCA, and about 21 years as President of Intellectual Property Dynamics, and who is the Chief Technological Officer for LIRSI, assignee of the two patent properties, also failed to note the amazing confusion until I alerted him. On Tuesday, Wednesday, Thursday, and Friday morning, we each read 6,482,108 seeing what we expected to see, and only awakened to the amazing confusion when I made a "fine tooth" investigation on Friday afternoon. After discovering that Dick Jenkins could have overlooked it for several days, I was not as chagrined.

Although a Certificate of Correction will be routinely sought so that the allowed method claims are properly restored to 6,482,108, such formality should

McLaughlin, 10/015, 708, 11/02/01 [Division of 09/235,618 of 001/21/99 not delay the issuance of a Notice of Allowance herein. LIRSI seeks valid patent protection that merits a licensing program. There should never have been a restriction requirement. Only the Patent Office [through additional fees] has any benefits from the issuance of two patents instead of one. LIRSI has made the commitments for common ownership of the two patents, and they expire simultaneously. Accordingly, the significant difference between one and two patents consists significantly in the collection by the Patent Office of greater maintenance fees.

The Index data from PAIR [Exhibit A] do not show: [a] that Examiner S. Smith telephoned counsel on Aug. 8, 2001; [b] that Examiner Smith indicated in such phone conversation that the divisional application could be filed by FAX following the procedure of a CPA application; [c] that I filed by FAX a confirmation of such telephone conversation on Aug. 9, 2001, a copy of which is attached as Exhibit B; and [d] that I submitted by FAX to Examiner Smith a copy of what was then proposed as a divisional application. Because the claims printed in 6,482,108 apparently correspond to such Aug. 9 proposal for a divisional application, I suspect that at some stage in the very complex processing of nearly fifteen months between the 09/07/01 Notice of Allowability and the 11/19/02 printing of the patent, some unknown clerk [who may no longer be working for the Patent Office] handling the file of 09/235,618 goofed and used such proposed divisional application when providing the printer with what was supposed to be 6,482,108.

The Aug. 9, 2001 Transmittal [Exhibit B] should be evaluated with the concurrent memo to Dick Jenkins of Aug. 9, 2001, a photocopy of which is identified as Exhibit C. These documents confirm that Examiner Smith indicated that the CPA procedure [FAXing] could be used in filing the proposal for a

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After several days cogitation about the amazing confusion, I have recognized that possibly some unknown clerk [who may not be currently employed by the Patent Office] when forwarding data for printing might have inadvertently submitted, not the allowed case with its method claims, but the copy of the Aug. 9, 2001 proposal for a Divisional Application, as FAXed to the private Smith FAX number on August 9, 2001.

After discovering that the divisional case should be filed with the Preliminary Examination office, I initially wanted to obtain the benefit of such Aug. 9, 2001 filing date for this case. For that reason, I sought evidence that the conspicuously marked divisional application was still "dangling" in the parent case. It was only after my Arlington associate attorney, Eric Scherlin, who was given a Power to Inspect 09/235,618 in October was told that the case was not available that I started preparing for the routine filing of this application. Such background is needed in interpreting some of the items on the Index of the File History of the parent case, that is Exhibit A.

Entries 40.9 -53.0 related to now abandoned efforts to accept a duplicate of the Nov. 2, 2002 payment of the Issue Fee for 09/235.618, eventually dealt with by paying the fee for revival of an unintentionally abandoned application [entries 66,



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67,68,69,70,72].

Item 77 indicates that the requirement for a drawing was withdrawn on September 13, 2001. Counsel presently has no recollection of the receipt of the Request for Replacement Drawings [Item 57 of Nov. 13, 2002] thus being consistent with such item 77 of September 13, 2001. rch. This is consistent with item 77, drawing not required of 09/07/01, so that there may have been some confusion concerning the numbering of the items.

Exhibit A makes no mention of the telephone request, stimulated by the printer, for new drawings, and my Confirmation of Phone Call [Exhibit E} and my Transmittal [Exhibit F] of such drawings responsive to such phone call

I am somewhat baffled about the entries relating to transfer to the Publications Group and/or Contractor, Items 54 of 09/13/01, 55 of 01.14/02, 58,60, of 02.04/02, 60 of 02/18/02,61 of 03/21/92, 62,63 of 04/10/02, 73 of 08/20/02, 74-75 of 10/09/02, and 79 of 10/18/02.

I would welcome the assistance of Examiner A. Rade in obtaining any supplemental evidence that might be helpful in prosecuting the Certificate of Correction for 6,482,108.

I am continuing my investigation, but deemed it appropriate to alert the Examiner to the amazing confusion that can be predominantly ignored herein.